IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

S.B. CIVIL REGULAR FIRST APPEAL NO.140/1989
(Madan Lal & Ors. Vs. Punjab National Bank & Anr.)

Date of Judgment : July 30th, 2007

P R E S E N T

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. Sanjay Mathur, for the appellant.
Mr. Jagdish Vyas, for respondent No.1.

This first appeal is directed against the judgment and decree dated 14.3.1989 passed by Additional District Judge No.1, Udaipur in Civil Suit No.56/80 whereby the suit filed by plaintiff-respondent No.1 – Punjab National Bank was decreed against the defendants and they have been jointly and separately directed to pay a sum of Rs.14,664.60 paisa along with interest @ 16% per annum from 1.4.1980.

According to the facts of the case, the plaintiff-respondent No.1 – Punjab National Bank filed a suit against father of appellants – Late Laxmi Lal Kheradi – defendant No.1 and defendant-respondent No.2. After the death of Laxmilal Kheradi, the

appellants, who are legal heirs of him, were brought on record. According to the facts narrated in the plaint, a suit was filed for recovery of amount of Rs.14,130/- along with interest on the ground that cash credit facility was allowed to defendant-respondent No.2 – Himmat Lal , who had a shop in the name and style of M/s. Rajasthan Wooden Toys Emporium, Udaipur. According to the plaint, the said cash credit facility was allowed as applied by defendant-respondent No.2 to the extent of Rs.5,000/- and in consideration of cash credit facility, the defendant-respondent No.2 Himmatlal hypothecated the goods of his shop and as per the averments made in the plaint, Late Laxmilal – father of the appellants furnished a guarantee in the Bank in favour of defendant-respondent No.2 and signed letter of guarantee on 14.5.1970. The said document was brought on record as Exhibit-3. In the suit though defendant-respondent No.2 appeared but did not file any written statement. The appellants filed written statement and denied the averments made in the plaint with regard to furnishing bank guarantee (Ex.-3) by their father late Laxmilal.

Learned trial Court framed seven issues, which are as follows :

> "1- आया वादी बैंक की ओर से अशोककूमार भार्गव को यह वाद पेश करने का अधिकार है व वे अधिकारपत्र के अनुसार पावर आफ एटार्नी होल्डर हैं ।

2- आया प्रतिवादी हिम्मत लाल ने वादी से अपने व्यापार वुडन टायज् इम्पोरियम के लिए 5000/- तक के केश क्रेडिट लोन लेने का आवेदन कर हाईपोथिकेशन का इकरार कर सुविधा ली तथा प्रति०2 ने गारन्टी दी व दोनों ने तत्सम्बनधी दस्तावेजात लिपिबद्व किये ।

3- आया प्रतिवादी ने इस लोन के लिए रिजर्व बैंक आफ इंडिया से 5 प्रतिशत अधिक से ब्याज देने की शर्त तय की व अण्डरटेकिंग, प्रोनोट लिखा, दस्तखत किये व वादी का 31/3/80 तक 14,130/- रूपया बाकी है जो प्रतिवादीगण से वसूल करने का अधिकारी है ।

4- आया प्रतिवादी सं०1 ने वाद के चरण सं०6 में दर्ज तारीखों पर बकाया का स्वीकार किया व जमा कराने का आश्वासन दिया व प्रति०सं०2 को कन्टून्यूड गारन्टी होने से वाद हेतु 19.4.77 को स्वीकृति से पैदा होने से दावा मियाद में है ।

5- आया वादी दाम दुपट के सिद्धांत से मूल से दुगुना से अधिक राशि पा नहीं सकता ।

6- आया प्रतिवादीगण की हैसियत एकमुश्त रकम अदा करने की नहीं है जिससे किस्तबन्दा 25/-माहवार कराने के अधिकारी हैं ।

7- दादरसी क्या होगी ।"

According to the appellants, issues No.2, 3 and 4 are important because learned trial Court decided these issues together and relied upon the evidence of PW-1 – Bala Shankar and PW-2 – Sanjay Kaushik and reached to the conclusion that defendant-respondent No.2 is liable to pay the amount for which the suit has been filed and the appellants are also liable to pay the amount as their father late Laxmilal was guarantor of defendant-respondent No.2. As per the finding of the learned trial Court PW-1 and PW-2 proved the signature of late Laxmilal on Ex.2, therefore, the appellants were liable to pay the

amount. The appellants have filed this appeal challenging the validity of said suit though it has not been challenged by respondent No.2 in whose favour the cash credit facility was allowed by the Bank.

Learned counsel appearing on behalf appellants – legal heirs of guarantor late Laxmilal argued that the learned trial Court has committed error while relying upon the statement of PW-1 Bala Shankar and PW-2 Sanjay Kaushik. According to the appellants' counsel both the witnesses are neither hand-writing expert nor they were in position to have seen the signature of late Laxmilal on earlier occasions. On perusal of statement of PW-1 Bala Shankar, it cannot be presumed that late Laxmilal put his signature in front of him. This witness was also cross-examined and a question was put to him with regard to expertise but he has stated that he is not expert. Therefore, the entire evidence of PW-1 Bala Shankar is based on surmises, conjectures and imagination and such evidence cannot be relied upon but the learned trial Court has committed an error while relying upon the statement of PW-1 Bala Shankar. Learned counsel for the appellants further argued that late Laxmilal died at the age of 70 years on 2.7.1979 while this witness stated in his cross-examination that age of late Laxmi Lal was around 35 years when the alleged documents were executed. It is also argued that this witness has stated in his statement

that age of defendant-respondent No.2 was 40 years when the said documents were executed. It is argued that defendant-respondent No.2 Himmat Lal is son of Late Laxmilal and father cannot be younger to his son, therefore, such witness cannot be treated to be a witness for the purpose of decreeing the suit. Similarly, it is argued that statement of PW-2 Sanjay Kaushik cannot be relied upon for the reason that he is not only an important witness being an employee of Punjab National Bank but further he is not expertise in comparing the signatures. According to the learned counsel for the appellants, the trial Court has committed gross error in not sending specimen signature to expert and to rely upon the statement of PW-2. It is argued that straight-away putting the liability upon the guarantor is erroneous because efforts are required to be made for recovery from the actual borrower first. It is also argued that it is an admitted fact that goods which were lying with the shop of respondent No.2 were hypothecated with the Bank and Bank was having a lock upon the goods, therefore, it is clear that the learned trial Court has not mentioned as to whether the goods were in the possession of bank, and if the goods were in the possession of the bank the entire amount is to be recovered from goods and in such circumstances the appellants – legal heirs of guarantor cannot be held to be responsible. Therefore, the judgment and decree under appeal deserves to be quashed. It is also

argued that late Laxmilal never accepted that he has furnished guarantee, which is said to be executed on 14.5.1970 and plaintiff-respondent No.1 is claiming amount from 1.4.1980. Since late Laxmilal never accepted the letter of guarantee, the suit stands barred. Further, it is argued that the learned trial Court has committed error while awarding 16% interest, which is excessively high. Thus, upon above arguments, it is prayed that the decree may be set aside against the appellants.

Nobody has put in appearance on behalf of defendant-respondent No.2. Mr. Jagdish Vuyas, learned counsel, appeared on behalf of plaintiff-respondent No.1 – Punjab National Bank and argued that there is no error in the judgment passed by learned trial Court and the learned trial Court has rightly gave its finding that the defendant-respondent No.2 in whose favour cash credit was allowed and the legal heirs of late Laxmilal are liable to pay the amount for which the suit was filed. Learned counsel for the Bank has argued that appellants are only challenging the findings with regard to issues No.2, 3 and 4 and they are not disputing that cash credit facility was allowed in favour of the respondent No.2 by the Bank. According to the learned counsel for the respondent-Bank, learned trial Court has rightly relied upon the statement of PW-1 Bala Shankar and PW-2 Sanjay Kaushik, who were bank officials, therefore, the

contention of the appellants cannot be accepted that they are not experts and signatures were not sent for examination to the hand-writing expert. While inviting attention towards the statement of PW-1, it is contended that PW-1 Bala Shankar was working in the Punjab National Bank since 1966. It is also stated by him that he is knowing Himmat Lal . It is also stated by him that Himmit Lal put his signature and took loan from the Bank and he was present at that time and he has proved his signatures. Likewise, he has specifically stated that he is knowing Laxmilal, who was guarantor of Himmat Lal and he has also put his signatures in front of him and on that basis, it is stated by him that these are the signatures of Laxmilal. In the cross-examination also, he has given clear cut reply to the question put by learned counsel for the appellants and respondent No.2 that at the time of granting cash credit (loan), Himmat Lal put his signatures in front of him. It is true that in his statement he has stated that age of Laxmi Lal was about 30 to 35 years approximately. He has also categorically stated that "लक्ष्मीलाल ने उस रोज ही मेरे सामने दस्तख्त किये उससे पहले नहीं किये ।" Likewise, as per the statement of PW-2 Sanjay Kaushik, loan officer of the Bank, he has identified the signatures of Himmat Lal because his signature is lying in the Bank and on that basis being an bank employee, he has proved the signature of Himmat Lal as well as late Laxmilal.

Therefore, the learned trial Court has rightly arrived at with the finding that the Bank is entitled for claim amount and rightly passed the decree by the trial Court. Therefore, no interference is required in this case.

I have perused the entire record of the case as well as perused the judgment under appeal.

From perusal of the record, it is clear that the Bank has proved the signatures by way of producing the evidence of PW-1 Bala Shankar and PW-2 Sanjay Kaushik. When a specific statement is given by PW-1 Bala Shankar that Himmat Lal and Laxmilal put their signatures in front of him, then, it cannot be disbelieved. Upon cross-examination also, it is nowhere asserted that signatures were not put in front of PW-1 Bala Shankar. According to DW-1 Madan Lal, one of the appellants that he himself has accepted before the Bank that defendant-respondent No.2 - Himmat Lal is his brother and late Laxmilal was his father. It is accepted that Himmat Lal took loan from the Bank but stated that if any guarantee was given by his father or not, is not in his knowledge. When a question was put to him whether his father was literate, he stated before the Court that he was in position to give his signature. When a question was put to him whether he has any documents upon which the signature of late Laxmilal is appearing, he answered

in negative. It is true that in his statement, he has stated that he has no knowledge that late Laxmilal gave any guarantee in favour of Himmat Lal but he has accepted that his father was literate and he was in position to give signature. In my opinion, there is no evidence adduced by the appellants before the Court except the statement of DW-1 Madan Lal, who was not present at the time of giving guarantee before the Bank but this evidence is not sufficient to refute the claim of the Bank because as per the documents, which were exhibited in the Court clearly speaks that it bears signature of late Laxmilal as a guarantor. It is also practice in the Bank that they preserve signatures of their customers continuously and the Bank is having faith upon the customers while allowing any loan. By way of placing on record the documentary evidence, the Bank has proved that cash credit was allowed in favour of respondent no.2 – Himmat Lal, who was son of late Laxmilal, who gave guarantee on behalf of Himmat Lal, therefore, the finding of learned trial Court cannot be said to be perverse and untrustworthy. Moreover, while placing on record the documentary evidence as well as statement of PW-1 and PW-2, the Bank has proved its case and the learned trial Court has rightly passed decree against respondent No.2 and late Laxmilal. Therefore, the finding of the learned trial Court does not require any interference by this Court. With regard to arguments of the learned counsel for the appellant for contradiction of age in

the statement, it is very strange that it was not a issue before the trial Court. Obviously, when there was no issue before the Court, then there was no occasion for the Court to decide the same. The appellants are challenging the finding of issues No.2, 3 and 4, which are well proved by the plaintiff-respondent Bank.

In these circumstances, the judgment and decree dated 14.3.1989 passed by Additional District Judge No.1, Udaipur does not require any interference by this Court. Accordingly, this appeal is dismissed.

(GOPAL KRISHAN VYAS), J.

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